MINUTES
of the
THIRD MEETING
of the
TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

September 10, 2013
Room 307, State Capitol

The third meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was called to order by Representative Roberto "Bobby" J. Gonzales, chair, on Tuesday, September 10, 2013, in Room 307 of the State Capitol.

Present	**Absent**
Rep. Roberto "Bobby" J. Gonzales, Chair	Sen. John Arthur Smith, Vice Chair
Rep. Ernest H. Chavez	
Sen. Lee S. Cotter	
Sen. Ron Griggs	
Sen. Timothy M. Keller	
Rep. Larry A. Larrañaga	
Rep. Patricia A. Lundstrom	
Rep. Jane E. Powdrell-Culbert	
Sen. Clemente Sanchez	

Advisory Members

Sen. Jacob R. Candelaria	Rep. Sharon Clahchischilliage
Sen. Carlos R. Cisneros	Sen. William H. Payne
Rep. Nathan "Nate" Cote	Sen. William E. Sharer
Rep. Anna M. Crook	
Rep. Edward C. Sandoval	

Staff
Pam Stokes, Legislative Council Service (LCS)
Amy Chavez-Romero, LCS
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts are in the meeting file.

Tuesday, September 10

Is Oregon's Per-Mile Road Usage Charge the Future of Road Funding in the United States?

James Whitty, manager, Office of Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation (ODOT), began by saying that he would present the results of a 12-year effort to determine a new way to raise revenue for Oregon's road system, which started in 2001 and culminated in the recent passage of legislation to implement the system. He gave highlights on the ODOT's policy history as related to user payment, which included a gas tax enacted in 1919, a weight mile tax enacted in 1933, a cost allocation study completed in 1937 and gas tax increases over time. He said, however, that taxing gas is not the only approach to raising revenue and many states are adopting flat-fee alternatives. He opined that this is really a matter of legislative choice; in Oregon, the legislature wanted to go with a user-pay system.

Initially, Oregon's legislation established a Road User Fee Task Force (RUFTF) in 2001 whose charge was to develop policy recommendations for a new revenue system based on road use. The legislature, he said, had an idea that the vehicle fleet would change, and the RUFTF made recommendations that resulted in a per-mile charge that replaced the gas tax as well as allowing for a fuel tax refund for pilot participants who were paying a mileage fee. The ODOT was directed by this legislation to administer the RUFTF and implement pilot programs based on policy recommendations.

Mr. Whitty reported next on what the ODOT learned about mileage reporting, describing basic, advanced, switchable and simplified options. He added that states that have annual vehicle inspections already collect data on mileage. He said that some electrical and high-end vehicles already have a meter installed in them or a separate device can be purchased and installed; Oregon used the latter option in its pilot program. In reviewing payment options for the road usage charge, Mr. Whitty said payment is no different than for any other services that are paid by invoice.

He then highlighted the policy issues for the ODOT's first pilot for the per-mile charge system, which occurred in 2006-2007. Among its choices were to replace the fuel tax and to use electronic data collection, one method of reporting, location-based mileage reporting, government-selected technology, government operations and one method for billing. The original pilot had a pay-at-the-pump model using a global positioning system (GPS) device to collect mileage, he added. Data were then transferred at the fuel pump and the charge was determined there and added to the fuel bill, and the gas tax was deducted. He said that there was negative public reaction, especially to privacy issues related to the GPS device. In the national reviews Oregon received at the time, many indicated that the system was viable but most reviewers were not enamored with the pay-at-pump model or use of a GPS device.

In response, Mr. Whitty said that the second pilot represented many different policy choices. One shift was to multiple choices for reporting so that the motorist has the choice;

mileage reporting was shifted to either basic or location-based; technology was changed to market-selected rather than government; a choice was given for using either government operations or private sector; and multiple methods of billing were embraced, again to give the motorist more choice. This second pilot began in November 2012 and lasted through February 2013, and it involved participation from eight state legislator volunteers and 36 others. He said that this time there was not a GPS option at the basic level and private sector firms provided mileage reporting devices and account management. Participants went online and selected how they wanted to report miles and pay, he explained, and the fuel tax was deducted as applicable. He said that the billing was done on a quarterly basis.

Regarding the implementation of the Oregon road usage charge legislation, Mr. Whitty assessed it as a simple and easy system to use for motorists. The legislation asked for the participation of 5,000 volunteer light vehicles, charged a rate of $.015 per mile, included a rebate of fuel taxes paid, asked the marketplace to supply reporting technologies, assessed penalties for nonpayment and protected personal information. In terms of privacy issues, Mr. Whitty indicated that the American Civil Liberties Union (ACLU) initially came forward as an opponent of this legislation because the protections were not strong enough; the ACLU insisted on the destruction of mileage data, which was added.

Mr. Whitty spoke of five issues involved in choosing a rate structure for the road usage charge: fairness or simplicity; totally or partially replacing the fuel tax; low entry rate or average rate; single rate or multiple rates; and complete policy or multiple steps. Oregon chose fairness; partially replacing the fuel tax; using an average and single rate; and using multiple steps in the policy.

He then discussed the unfairness of the fuel tax and the loss in revenue as more vehicles are hybrids or are more fuel-efficient. The goal, then, of the road usage charge is to maintain the gas tax for fuel-inefficient vehicles and establish a distance-based charge for fuel-efficient vehicles. He said that these two systems can be run together. He added that the drivers that object to a distance-based charge generally live in rural areas and drive big vehicles; he suggested that these drivers should pay the fuel tax, since the distance-based charge is a problem for them. He also said that a flat rate would give this group a deal, but that the fuel-efficient vehicle drivers would then object.

Mr. Whitty indicated that ODOT is inviting all western states to participate in the Western Road Usage Charge Consortium, which will research multijurisdictional issues and the potential for a regional system. He invited all states to the Oregon Road Usage Charge Summit to be held on November 13, which will include informative discussion on Oregon's system and workshops for vendors.

Subcommittee members asked several questions, and the following points were discussed:

- in terms of generating revenue through this shift, the pilot program was designed to be revenue-neutral; positive net revenue will be reached in the second year of implementation of the legislation; any large revenue generation is difficult to predict and depends on how fast people will opt into buying fuel-efficient vehicles and then when the road usage charge can be implemented for vehicles getting 40 or 45 miles per gallon (MPG) rather than the initial number of 55 MPG;
- Oregon did not address any applications of the road usage charge for nonresidents traveling within the state at this time;
- the ODOT held many focus groups on this initiative, which helped immensely with communicating and educating the population on the issues and decisions behind the legislation and helped to appease any negativity;
- how to handle state roads on Native American land, which Oregon did not address. The question remains as to how New Mexico could handle this, either by excluding miles driven on Native American land or being dependent on the type of reporting the driver has chosen; the bottom line is that Native Americans need to be at the table;
- Oregon did not address a benefit for low-income people or seniors, but New Mexico could;
- those with beautiful 1948 pickup trucks could not obtain the needed reporting device, which cannot be adapted to older vehicles;
- largely rural areas are more sensitive to road usage charges; it is necessary to have strong communication across the state's differing constituencies;
- the possibility of engaging in scenario planning with New Mexico's state-owned vehicles and a state agency to pilot a similar program to Oregon's; there is already a pilot project going on in the General Services Department using GPS systems in state vehicles to collect information for repair and maintenance that might be adapted to pick up other information;
- one way for New Mexico to begin testing the waters for such legislation could be to begin with an appropriation bill for a study that would accomplish piloting the program with state vehicles, with the help of Oregon in crafting this; and
- meanwhile, New Mexico still needs to look at more immediate means of generating revenue for its roads.

State of the Rail Runner

Dewey Cave, executive director of the Mid-Region Council of Governments (MRCOG), and Terry Doyle, director of Rio Metro Regional Transit District (RMRTD), gave a brief history of the Rail Runner, alongside specifics of its budget and expenditures.

Mr. Cave began by citing March 2005 as the formation of the Mid-Region Transit District, from which the RMRTD assumed operations management through establishing a memorandum of understanding to provide staffing and began service in 2006. He said that the original operational costs were borne by the state and that up until fiscal year (FY) 2012, the New Mexico Department of Transportation (NMDOT) paid a portion of operational costs using federal and state money. He added that the Rio Metro Region receives about $10 million annually in funding for the Rail Runner and that the need for state funds to support its operation has been eliminated because of this. He ended by saying that the financial position of the Rail Runner has been stabilized.

Mr. Doyle gave some budget specifics, referring to the table in the handout, and stated that the RMRTD is attempting to build a cash reserve for the Rail Runner to take care of some of its capital improvement needs. He went through all revenues in detail, including capital and operating revenues from federal flex funds for which there is a suballocation available for the Albuquerque area. He said that the federal 5317 revenues represent new federal money coming into the state. He added that federal 5307 and 5317 revenues can only be used for capital maintenance on the railway and equipment as well as for vehicles. He stated that the Burlington Northern Santa Fe Railroad (BNSF) and Amtrak leases include a fee that these railroads pay to the state, which money is used for track maintenance. In addition, Mr. Doyle spoke of a fare increase that lost the Rail Runner some ridership in April 2012; he also said that approximately $3.1 million is the projected revenue through the fare box for FY 2014. He said that the 7,000 jobs lost statewide have affected this revenue, as the Rail Runner serves both federal and state employees who commute. Advertising revenue for FY 2014 is at $75,000.

Expenditures for the Rail Runner in FY 2014 are budgeted at $25 million annually. Mr. Doyle said that of that total, the Herzog transit contract receives over $16 million for handling track maintenance. Mr. Doyle stressed the importance of the railroad being maintained to a specific class. He reviewed capital improvements in the budget for maintenance of equipment and line improvements. In conclusion, Mr. Doyle pointed to the ridership levels per year and month, with the best year being in 2011, with over 1.2 million passengers.

Subcommittee members asked questions, and the following points were addressed:

- because of the Rail Runner, the equivalent of approximately an interstate lane of traffic is being removed from the road during peak travel times; the MRCOG could provide figures on an annual basis for how this might affect accident reduction;
- the RMRTD and NMDOT have worked together on safety issues, which include a safety campaign in conjunction with federal programs, awareness campaigns, television advertisements and improvements of railroad crossings, including fencing;
- from a fare box recovery standpoint, the Rail Runner's 8% of revenue derived from fares puts it in the middle of its peer group of smaller railroad systems;
- in terms of increasing ridership, some of the job sectors that need to be addressed include the health care industry and education (neither of which is served by current timetables); providing more connective services would also help;
- successful rail networks generally have a lot of residents near stations, which is challenging in New Mexico; a change in land use components so that the Rail Runner could grow differently and more creatively is needed;
- there is a need to look at corridors of connectivity to the stations so that commuting time could be decreased and ridership increased;

- WiFi issues continue on the Rail Runner, largely because of vandalism at the Waldo Canyon site;
- as related to the Zia Road stop, a draft traffic study is being reviewed that should be completed by year's end and that should help to ensure that the area is safe when the station does open; the Las Soleras stop seems to be at a standstill;
- the City of Albuquerque is in charge of construction at the Montano crossing; it is likely that train service could begin there by late December or early January;
- regarding track leases, the BNSF retains a permanent freight easement and pays the NMDOT fees each year depending on how much freight it moves; Amtrak pays a fixed rate for its trains and pays the NMDOT as host railroad; and
- ridership is measured by ticket takers and conductors doing physical counts; there is also a pilot project in place that automatically counts passenger boardings; it costs $7,000 per year for personnel to collect these numbers.

Representative Lundstrom made a motion that the August 28 meeting minutes be approved, which was seconded by Representative Larrañaga and unanimously approved by the subcommittee. Representative Gonzales announced that one federal transportation investment generating economic recovery discretionary grant was awarded to the state and went to the Pueblo of Taos. He also announced that the next Western States Transportation Alliance meeting is in Albuquerque on November 3 through November 5, which would be a good opportunity for the TRANS to attend, although it conflicts with the TRANS meeting on November 4, so this needs to be reviewed.

Public-Private Partnerships — Industry Perspectives

Earl L. Mahfuz, financial management consultant at CDM Smith, and Christopher Frieberg, vice president of project development at Kiewit Infrastructure Company, gave industry views on public-private partnerships (PPP). Mr. Mahfuz began by defining a PPP as an agreement between a public agency and a private entity that allows for greater participation by the private sector in providing the delivery of projects. He said that a PPP is more than a traditional design-bid-build arrangement where the public sector takes all of the risks except construction. In a traditionally funded project, there is an emphasis on public financing and a low-bid selection process, and operation and maintenance (O&M) are the responsibility of the public agency. With a PPP, the risk is shared and the emphasis is on private financing, he added. Also, he said, a PPP agreement defines the performance specifications. In delineating what PPPs are not, Mr. Mahfuz stated that a PPP is not a new source of revenue; is not a means of privatizing public infrastructure, since the government continues to own the project; is not a fit for every project or a guaranteed success; and is not a "silver bullet" for state and local needs.

Mr. Mahfuz highlighted the benefits of PPPs as cost savings; an accelerated schedule for project delivery; innovative technology; budget and cost certainty; predictable and high service quality; life-cycle project perspective; and a leveraging of all partners' strengths to come up with the best formula for a project. Among the challenges of PPPs are public acceptance; the necessity for enabling legislation; a gap in terms of knowledge between the public and private sectors and a learning process for both; a different approach for project management and oversight; and the reliability of traffic and revenue.

There are several legal considerations with PPPs, which Mr. Mahfuz focused on next. The first is the need for enabling legislation that includes a contracting authority, financing and funding and a procurement process that is viable. Among the considerations for PPPs that need to be attended to are multi-year contracting, the state's debt limitations, public policy and the fact that all stakeholders need to be kept informed, he added.

Among the technical considerations Mr. Mahfuz spoke of are project screening, performance standards and O&M considerations. He said that many states are making money with these agreements and converting assets into revenue-generating projects. He emphasized the need to screen projects and to have clear, objective measures. In terms of O&M, he mentioned that the public entity involved in the project must ensure that safety is paramount. He also said that many types of ownership arrangements can be made between the public and private entities; for example, some states with cell towers own them at the end of the contract while others do not.

Mr. Mahfuz described a case study where Florida had a PPP arrangement with a design-build-finance-operate-maintain (DBFOM) contract, which was the largest construction contract in that state's history. He described this project as the first "availability-based" PPP in the U.S., with no public money being paid until project completion. He added that the price for the project came in at $275 million below the estimates of the Florida DOT.

He said that many states are making construction choices that give the traveling public more choices than just toll roads, such as managed lanes and general purpose free lanes. He encouraged discretion in terms of deciding if a project would benefit from a PPP and then how to structure the PPP, which requires a team of professionals. He encouraged New Mexico to study the structures that already exist and to modify these to fit New Mexico law. He also cautioned the state as an owner of the project to be careful to make good decisions, to assess risk and to be aware and open-minded. He concluded that to get legislation through, it is necessary to align the PPP strategy with that of the state's legislative and executive leadership.

Mr. Frieberg said he would be discussing PPPs from an industry perspective as a vice president of an organization with strong local ties in New Mexico with an office here for nearly 40 years. He started off by mentioning the Minnesota DOT's planning document, which states that its DOT will be having persistent budget challenges because many revenue sources are either seeing no growth or are declining. He added that Kiewit is looking at every avenue to maintain and to build transportation infrastructure, including collaboration and comparison of delivery models. He compared delivery models and talked about the construction manager general contractor model that is collaborative and minimizes risk because a contractor is involved early on in the process. He added that it is possible to do pre-construction with minimal funding, then to engage in construction later. The design-build model passes on the risk of design and construction to the contractor. In speaking of the benefits of PPPs, Mr. Frieberg said it is about transferring risk to the private sector and that other benefits include an ability to leverage future dollars, improve service delivery and make the pricing and timing more certain and that the model is predictable and competitive.

Mr. Frieberg then gave the example of a Canadian PPP project. He described the Canadian market as more mature than that in the U.S., with several provinces doing well with oil shale development and mining. He said that the preferred PPP model is one that returns a high value for money invested and that the project size for the Canadian PPP has a $40 million minimum. For the Canadian PPP, projects must have private sector involvement in at least two of the elements of DBFOM. He added that this model follows the same structure across provinces, so there is consistency that the market understands. He said that there are over 200 projects in procurement, with strong governmental support for the projects. He gave a comparison of risk allocation that shows how more risk is transferred to the private sector in PPPs. He then referred to a project evaluation criteria checklist that industry often uses and that includes such criteria as strong legislative policy; strong need and local support; obtaining permits or having them in a process that shows that a project is within an overall region or the state plan for development; financial sense with assurance of adequate revenue; a process with extensive industry input; legal agreement that protects all parties; risk allocation; technical feasibility, without unusual construction or technology challenges; an effective team; an ability to self-perform the needed work; and a budget that is affordable and equitable. He reiterated what Mr. Mahfuz had said earlier: that PPP is another delivery model, not a silver bullet and not a funding source, but that great innovation is possible here. He concluded by saying that PPPs are complicated and it takes expertise and effort to structure, procure and deliver within this model.

Subcommittee members engaged in questions, and the following points were made:

- with PPPs, there is one procurement where both the state and federal governments are aligned with the procurement model and delivery;
- if New Mexico were to take on the PPP model, the NMDOT would need legal and financial counsel, much like the assistance needed when a bond deal is structured;
- states handle right-of-way issues in different ways by establishing terms and conditions up front through the contract process;
- in order for PPP legislation to be successful, communication with industry contractors and taxpayers is essential, as is educating legislators on the various approaches, and contractors must be allowed to bring innovation forward, leverage their resources and still get the work they need;
- in Kentucky, there were issues with PPP and local unions not wanting this delivery method, but without the PPP, the project could not get done at all, so it was more accepted;
- when PPP legislation was first being crafted, almost all projects were unsolicited, which meant a lot of resources were used and few projects actually went through; Virginia legislation changed this to allow for solicitation, and Georgia copied this;

- regarding PPP legislation, it is advisable not to start from scratch — there are many states to look at and model after;
- although the cost of financing to the private sector is generally higher than to government, the advantage comes when looking at options as opposed to a traditional pay-as-you-go project; often, getting the project done earlier leads to cost savings on construction;
- generally, states do not lose on PPP projects that are well-structured, and, in any case, the state owns the project;
- the subcommittee would benefit from being walked through an example of a PPP step-by-step, comparing a specific project done through various delivery methods, including a PPP; and
- the NMDOT has not received or solicited any PPP projects and it would take a private interest to step in and be willing to pay a fee or concession because otherwise it would be another debt, which the state could not handle.

Adjournment

There being no further business before the subcommittee, the TRANS meeting adjourned at 2:04 p.m.